

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
CONCERNED INDUSTRIES OF PUGET)
SOUND, CONTAINER CORPORATION OF)
AMERICA, KAISER ALUMINUM &)
CHEMICAL CORPORATION, GEORGIA)
PACIFIC CORPORATION, REICHOLD)
CHEMICALS, INC., SONOCO PRODUCTS)
COMPANY, GACO WESTERN, INC.,)
SCOTT PAPER COMPANY, LIANGA)
PACIFIC, INC., CROW ROOFING &)
SHEETMETAL, INC., LONGVIEW FIBRE)
COMPANY, WASHINGTON STOVE WORKS,)
WEYERHAEUSER COMPANY, ASARCO)
INCORPORATED, PUGET SOUND PLYWOOD,)
INC., CONCRETE TECHNOLOGY)
CORPORATION, A CLASS CONSISTING)
OF ALL PERSONS AND INDUSTRIES)
SUBJECT TO THE PSAPCA)
REGISTRATION FEE,)

Appellants,

v.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB No. 83-5

ORDER DISMISSING APPEAL
FOR LACK OF JURISDICTION

This matter came before the Pollution Control Hearings Board on motion of respondent. The parties filed written argument and supportive documents.

The issue raised in the motion is whether this Board has jurisdiction to hear and decide the matter raised in the notice of appeal, i.e., whether the adoption by respondent's Board of Directors of Resolution 530 and the amendments to Regulation I is an order or decision appealable to this Board.

1 In Camran Corp. v. PSAPCA, PCHB No. 109, Justice Matthew Hill
2 wrote:

3 The Washington Clean Air Act makes a clear
4 distinction between orders and decisions of Pollution
Control Agency and its adoption of regulations and
the amendments thereto.

5 In outlining the powers of the Pollution Control
6 Agencies, the Legislature authorizes the adoption of
regulations, and their amendment and repeal, and
7 makes no suggestion of any right of review. (RCW
70.94.[1]41(1)).

8 However, the same section in subsection (3),
when it speaks of "orders by the Agency or its
9 control officer," makes them subject to the Rights of
Appeal as provided in Chapter 62, Laws of 1970, 1st
10 Ex. Sess. (The Act which created the Pollution
Control Hearings Board.)

11 The Pollution Control Hearings Board does not
presume to pass on the merits of the appellant's
12 contentions as to propriety or validity of Resolution
141 adopted by the Puget Sound Air Pollution Control
13 Agency, but being a Board of expressly limited
jurisdiction, and believing itself to be without
14 jurisdiction to hear the aforesaid appeal of The
Camran Corporation, dismisses the same for lack of
jurisdiction.

15 We are not aware of any changes in the law which compel a
16 different result. This quasi-judicial Board has jurisdiction over
17 "contested cases" (RCW 34.04.090); the courts have jurisdiction to
18 hear appeals from resolutions and regulations relating to legislative
19 matters. Ch. 7.24 RCW. Cf. RCW 34.04.070 (appeals from adoption of
20 rules by the Department of Ecology).

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26 ORDER DISMISSING APPEAL
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1 The motion to dismiss is granted and the appeal is dismissed for
2 lack of jurisdiction.

3 DATED this 14th day of April, 1983.

4 POLLUTION CONTROL HEARINGS BOARD

5 David Akana
6 DAVID AKANA, Lawyer Member
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8 Gayle Rothrock
9 GAYLE ROTHROCK, Chairman
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11 SEE DISSENTING OPINION
12 LAWRENCE J. FAULK, Member
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PUGET SOUND AIR POLLUTION
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PCHB No. 83-5

DISSENTING OPINION

This matter came before the Pollution Control Hearings Board on motion of respondent. The parties filed written argument and supportive documents.

The issue raised in the motion is whether this Board has jurisdiction to hear and decide the matter raised in the notice of appeal, i.e., whether the adoption by respondent's Board of Directors of Resolution 530 and the amendments to Regulation I is an order or decision appealable to this Board.

1 The legislation which created the Pollution Control Hearings
2 Board, contains provisions applicable to this issue:

3 RCW 43.21B.010 provides as follows:

4 Pollution Control Hearings Board created -
5 Purpose. There is hereby created within the
6 environmental hearings office a pollution control
7 hearings board of the state of Washington.

8 The purpose of the pollution control hearings
9 board is to provide for a more expeditious and
10 efficient disposition of appeals with respect to the
11 decisions and orders of the department and the
12 director and with respect to all decisions of air
13 pollution control boards or authorities established
14 pursuant to Ch. 70.94 RCW.
15 (Emphasis added.)

16 Likewise, in ASARCO v. Air Quality Coalition, 92 Wn.2d 685 (1979)
17 the State Supreme Court had occasion to address the jurisdiction of
18 the PCHB. Referring to RCW 43.21B.130 the State Supreme Court held:

19 In light of the act's specific grant of
20 jurisdiction to hearings boards over appeals from all
21 decisions of air pollution control agencies, we hold
22 the PCHB had jurisdiction over an appeal from the
23 granting of a variance, which clearly involved a
24 decision of PSAPCA. State ex. rel. Martin Marietta
25 Aluminum, Inc., v. Woodward, 84 Wn.2d 329, 525 p.2d
26 247 (1974), cited by neither party, is in agreement
27 with this position and is determinative of the
jurisdictional issue. At page 332 Woodward makes it
abundantly clear that the PCHB has "appellant
jurisdiction not only of orders of violations, but
also over all decisions of DOE, its director and the
pollution control boards and authorities" such as
PSAPCA.

28 Promulgation of PSAPCA Resolution 530 is certainly a "decision" of
29 PSAPCA and thus reviewable by the PCHB. The fact that adoption of
30 this resolution also requires payment of the registration fee by the
31 appellants renders it an "order" of PSAPCA also reviewable by the PCHB.

1 I believe the Pollution Control Hearings Board has jurisdiction to
2 hear this appeal.

3 The motion to dismiss should be denied and the appeal heard by the
4 Board.

5 DATED this 14th day of April, 1983.

6 POLLUTION CONTROL HEARINGS BOARD

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LAWRENCE J. PAULK, Member